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SONICWALL INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FINJAN, LLC, A Delaware Limited Liability Company,

Plaintiff.

V.

SONICWALL INC., a Delaware Corporation.

Defendant.

Case No.: 5:17-cv-04467-BLF-VKD

SONICWALL INC.'S ADMINISTRATIVE MOTION TO FILE DOCUMENTS UNDER SEAL

1 **I. INTRODUCTION**

2 Pursuant to Civil L.R. 7-11 and 79-5, this Court's Standing Civil Order Re: Civil Cases, the
 3 Parties Stipulated Protective Order (Dkt. 68) and Federal Rule of Civil Procedure 26(b)(5)(B),
 4 Defendant SonicWall Inc. ("SonicWall") hereby moves the Court for leave to file under seal,
 5 pursuant to Civil L.R. 79-5(d)-(e), the items identified in the table below:

Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
	SonicWall's Motion to Exclude Improper Expert Testimony Based on Finjan's Willfulness Allegations (Motion in Limine No. 1)	Highlighted portions at: Pg. 1 at lines 8-19 and 24-25; Pg. 2 at lines 1-3, 7-9 and 18-20; Pg. 3 at lines 5-6	The highlighted portions of this document reflect information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorney's Eyes Only – Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and/or operation of SonicWall's proprietary products as well as SonicWall's confidential business information. <i>See Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents Under Seal ("Grigg Declaration"), ¶¶ 2-5.</i>
	SonicWall's Motion in Limine to Exclude Dr. McDuff's Method No. 1 (Motion in Limine No. 2)	Highlighted portions at: Pg. 1 at lines 2-5, 11, 16-17, 21 and 25; Pg. 2 at lines 6-7, 13 and 21; Pg. 3 at lines 24 and 26-27; Pg. 4 at lines 2-3, 5, 10-12, 14, 19, 22-24 and 26-28; Pg. 5 at lines 2, 6-7, 11-12 and 18-20,	The highlighted portions of this document reflect information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns SonicWall's confidential business information. Additionally, highlighted portions of this document reflect information that Finjan has designated as "Highly-Confidential – Attorneys' Eyes Only" pursuant to the Protective Order. <i>See Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents Under</i>

Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
			Seal (“Grigg Declaration”), ¶¶ 2-5.
	SonicWall’s Motion to Exclude Dr. Striegel’s Technical Apportionment Opinions and Dr. McDuff’s Reliance Thereon (Motion in Limine No. 3)	Pg. 1 at lines 4 and 10-11; Pg. 5 at line 18	The highlighted portions of this document reflect information that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” or “Highly Confidential – Attorney’s Eyes Only – Source Code” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products. Additionally, highlighted portions of this document reflect information that Finjan has designated as “Highly-Confidential – Attorneys’ Eyes Only” pursuant to the Protective Order. See Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents Under Seal (“Grigg Declaration”), ¶¶ 2-5.
	SonicWall’s Motion in Limine to Exclude the Testimony of Dr. McDuff’s Price Per Scan Opinions (Method No. 3) (Motion in Limine No. 4)	Pg. 1 at lines 16-21 and 23-28; Pg. 2 at lines 1-3, 6-7, 15 and 17-20; Pg. 3 at lines 3-4, 6-10, 14-15 and 18; Pg. 4 at lines 7-9 and 11; Pg. 5 at line 7	The highlighted portions of this document reflect information that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” or “Highly Confidential – Attorney’s Eyes Only – Source Code” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products as well as SonicWall’s confidential business information. See Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents Under Seal (“Grigg Declaration”), ¶¶ 2-5.
1 to Gunther Declaration	Excerpts from the September 4, 2020 Expert Report of DeForest McDuff, Ph.D.	Entirety	This document contains information that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” or “Highly Confidential – Attorneys’ Eyes Only - Source Code” pursuant to the Stipulated

Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
			Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products as well as SonicWall's confidential business information. <i>See</i> Grigg Declaration, ¶¶ 2-5.
3 to Gunther Declaration	Excerpts from the September 3, 2020 Expert Report of Dr. Eric Cole Regarding Technology Tutorial and Infringement by SonicWall, Inc. of Patent Nos. 6,154,844; 7,058,822; 7,647,633; and 8,677,494	Entirety	This document contains information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorneys' Eyes Only - Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products, including its source code. <i>See</i> Grigg Declaration, ¶¶ 2-5.
4 to Gunther Declaration	Excerpts from the September 3, 2020 Expert Report of Michael Mitzenmacher, Ph.D. Regarding Infringement by SonicWall, Inc. of Patent Nos. 6,804,780; 6,965,968; and 7,613,926	Entirety	This document contains information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorneys' Eyes Only - Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products, including its source code. <i>See</i> Grigg Declaration, ¶¶ 2-5.
5 to Gunther Declaration	Excerpts from the September 3, 2020 Expert Report of Dr. Nenad Medvidović Regarding Infringement by SonicWall, Inc. of Patent Nos. 8,225,408; 7,975,305; and 8,141,154	Entirety	This document contains information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorneys' Eyes Only - Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it

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			concerns the identification, organization, and or operation of SonicWall's proprietary products, including its source code. See Grigg Declaration, ¶¶ 2-5.
6 to Gunther Declaration	Excerpts from the September 3, 2020 Expert Report of Dr. Aaron Striegel	Entirety	This document contains information that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" or "Highly Confidential – Attorneys' Eyes Only - Source Code" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products as well as SonicWall's confidential business information. See Grigg Declaration, ¶¶ 2-5.
7 to Gunther Declaration	Excerpts from the October 22, 2020 deposition transcript of Eric Cole	Entirety	This document contains testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products, as well as confidential business information of SonicWall. See Grigg Declaration, ¶¶ 2-5.
8 to Gunther Declaration	Excerpts from the October 26, 2020 deposition transcript of Michael Mitzenmacher	Entirety	This document contains testimony that SonicWall has designated as "Highly Confidential – Attorneys' Eyes Only" pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall's disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall's proprietary products, as well as confidential business and financial information of SonicWall. See Grigg Declaration, ¶¶ 2-5.

Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
9 to Gunther Declaration	Excerpts from the November 3, 2020 deposition transcript of Aaron Striegel	Entirety	This document contains testimony that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products, as well as confidential business and financial information of SonicWall. See Grigg Declaration, ¶¶ 2-5.
10 to Gunther Declaration	Excerpts from the November 2, 2020 deposition transcript of DeForest McDuff	Entirety	This document contains testimony that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products, as well as confidential business and financial information of SonicWall. See Grigg Declaration, ¶¶ 2-5.
13 to Gunther Declaration	Exhibit 5 to the November 2, 2020 Deposition of DeForest McDuff, Ph.D.	Entirety	This document was produced by third party Francisco Partners and was designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. See Grigg Declaration, ¶¶ 2-5.
14 to Gunther Declaration	Exhibit 10 to the November 2, 2020 Deposition of DeForest McDuff, Ph.D.	Entirety	This document contains internal email communications that SonicWall has designated as “Confidential” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products. See Grigg Declaration, ¶¶ 2-5.
17 to Gunther	January 16, 2014 email bearing Bates numbers FINJAN-	Entirety	This document contains internal email communications that Finjan has designated as “Confidential”

Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
Declaration	SW 403755 - FINJAN-SW 403759		pursuant to the Stipulated Protective Order. <i>See</i> Grigg Declaration, ¶¶ 2-5.
22 to Gunther Declaration	Exhibit 2 to the November 3, 2020 Deposition of Aaron Striegel bearing the Bates number SonicWall-Finjan_00101991	Entirety	SonicWall has designated this document “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the SonicWall’s confidential business information. <i>See</i> Grigg Declaration, ¶¶ 2-5.
23 to Gunther Declaration	Exhibit 3 to the November 3, 2020 Deposition of Aaron Striegel bearing the Bates number FINJAN-SW 158696	Entirety	This document contains information that Finjan has designated as “Confidential” pursuant to the Stipulated Protective Order. <i>See</i> Grigg Declaration, ¶¶ 2-5.
24 to Gunther Declaration	January 8, 2017 email bearing the Bates numbers FINJAN-SW 403972 - FINJAN-SW 403979	Entirety	This document contains information that Finjan has designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Grigg Declaration, ¶¶ 2-5.
25 to Gunther Declaration	Excerpts from the February 27, 2020 deposition transcript of Julie Mar-Spinola	Entirety	This document contains testimony that Finjan has designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Grigg Declaration, ¶¶ 2-5.
28 to Gunther Declaration	Excerpts from the October 9, 2020 Expert Report of Stephen L. Becker	Entirety	This document contains testimony that SonicWall has designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information could be used to SonicWall’s disadvantage by competitors as it concerns the identification, organization, and or operation of SonicWall’s proprietary products, as well as confidential business and financial information of SonicWall. <i>See</i> Grigg Declaration, ¶¶ 2-5.

II. ARGUMENT

1 **A. Legal Standard**

2 There is a presumption of public access to judicial records and documents. *Nixon v. Warner*
 3 *Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). However, records attached to non-dispositive motions,
 4 such is the case here, are not subject to the strong presumption of access. *Finjan, Inc. v. Proofpoint,*
 5 *Inc.*, No. 13-CV-05808-HSG, 2015 WL 9023164, at *1 (N.D. Cal. Dec. 16, 2015) (internal citation
 6 omitted). Because the documents attached to non-dispositive motions “are often unrelated, or only
 7 tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower
 8 “good cause” standard of the Federal Rules of Civil Procedure Rule 26(c). *Id.* (internal quotation
 9 marks omitted). The “good cause” standard requires a “particularized showing” that “specific
 10 prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen.*
 11 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (internal quotation marks omitted); see Fed.
 12 R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific examples of articulated
 13 reasoning” will not suffice. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).
 14 Sealing is appropriate where the requesting party “establishes that the document, or portions thereof
 15 is privileged or protectable as a trade secret or otherwise entitled to protection under the law.” N.D.
 16 Cal. Civ. L.R. 79–5(a). A party must “narrowly tailor” its request to sealable material only. *Id.*

17 **B. SonicWall's Administrative Motion to Seal Is Supported By Good Cause and Is**
 18 **Narrowly Tailored**

19 As noted in the table above, SonicWall seeks to seal select portions of its Motions in Limine
 20 Nos. 1-4 (“Motions”) at the pages listed in the table above and Exhibits 1, 3-10, 13, 14, 17, 22-25
 21 and 28 to the Declaration of Jarrad Gunther. SonicWall’s Motions quote from or reference the one
 22 or more exhibits that SonicWall is filing under seal which were designated as “CONFIDENTIAL”,
 23 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 24 ATTORNEY’S EYES ONLY – SOURCE CODE” pursuant to the terms of the Stipulated Protective
 25 Order. *See* Declaration of Nicole E. Grigg in Support of Administrative Motion to File Documents
 26 Under Seal (“Grigg Declaration”), ¶¶ 2-5. Pursuant to Civil Local Rule 79-5, SonicWall has publicly
 27 filed the relevant excerpts of information that are not confidential. Attached hereto are redacted and
 28 unredacted versions of SonicWall’s Motions and unredacted versions of the exhibits in support

1 thereof that SonicWall seeks to seal.

2 SonicWall seeks to seal Exhibits 1, 3-10, 14, 22, and 28 to the Declaration of Jarrad Gunther
 3 because they reflect or contain information that SonicWall has designated as “Confidential”, “Highly
 4 Confidential – Attorneys’ Eyes Only”, or “Highly Confidential – Attorney’s Eyes Only – Source
 5 Code” pursuant to the Stipulated Protective Order. If filed publicly, this confidential information
 6 could be used to SonicWall’s disadvantage by competitors as it concerns the identification,
 7 organization, and or operation of SonicWall’s proprietary products as well as SonicWall’s
 8 confidential business information. *See* Grigg Declaration, ¶¶ 2-5.

9 SonicWall contends that public disclosure of this information would cause irreparable harm
 10 to SonicWall. *Id.*; *see also Andrx Pharms., LLC v. GlaxoSmithKline*, 236 F.R.D. 583, 586 (S.D. Fla.
 11 2006) (“Courts dress technical information with a heavy cloak of judicial protection because of the
 12 threat of serious economic injury to the disclosure of scientific information.”); *Network Appliance,*
 13 *Inc. v. Sun Microsys. Inc.*, 2010 WL 841274, at *5 (N.D. Cal. Mar. 10, 2010) (granting application
 14 to seal “information regarding NetApp’s internal usability testing of its software”).

15 SonicWall is sealing Exhibit 13 because it was produced by third party Francisco Partners
 16 and designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated
 17 Protective Order.

18 SonicWall is sealing Exhibits 17 and 23-25 because they were designated by Finjan as
 19 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated
 20 Protective Order.

21 SonicWall’s administrative motion is narrowly tailored and only seeks to seal the exhibits
 22 associated with SonicWall’s Motions that were either designated in their entirety by Plaintiff Finjan,
 23 third party Francisco Partners or Defendant SonicWall as “CONFIDENTIAL”, “HIGHLY
 24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY – SOURCE CODE” or reflect information from which confidential
 26 and proprietary technical or financial information of SonicWall could be ascertained. *See Kowalsky*
 27 *v. Hewlett-Packard Co.*, 2012 WL 892427, at *2 (N.D. Cal. Mar. 14, 2012) (finding sealing
 28 appropriate where “[t]he proposed redactions contain[ed] . . . confidential product development

1 information, the disclosure of which could harm [the defendant's] competitive advantage in the
2 marketplace.”).

3 **III. CONCLUSION**

4 For these reasons, SonicWall respectfully requests that the Court grant its Administrative
5 Motion to Seal.

6 Dated: March 4, 2021

DUANE MORRIS LLP

7 */s/ Nicole E. Grigg* _____
8 Nicole E. Grigg
9 D. Stuart Bartow
10 Matthew C. Gaudet (admitted *pro hac vice*)
11 Robin McGrath (admitted *pro hac vice*)
12 David C. Dotson (admitted *pro hac vice*)
13 Jennifer H. Forte (admitted *pro hac vice*)
14 Joseph A. Powers (admitted *pro hac vice*)
15 Jarrad M. Gunther (admitted *pro hac vice*)

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Attorneys for Defendant
SONICWALL INC.

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that a true and correct copy of the above and foregoing
3 document has been served on March 4, 2021, to all counsel of record who are deemed to have
4 consented to electronic service via the Court's CM/ECF system.

5 _____
6 /s/ Nicole E. Grigg
Nicole E. Grigg

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